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Report to Congressional Requesters

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TRADE AND HEALTH ISSUES

Dichotomy Between U.S. Tobacco Export Policy and Antismoking Initiatives

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Congressional Requesters

This report is in response to requests received from the Committees and Members of Congress listed at the end of this letter. It reviews the role of the U.S. government in assisting the export of tobacco and tobacco products and the health-related implications of these activities.

In recent years, the U.S. Trade Representative (USTR) has been successful in negotiating removal of unfair foreign trade barriers that had restricted the export of U.S. cigarettes. Despite the fact that cigarettes meet current trade policy criteria, USTR's efforts to remove the trade barriers are controversial because of the health risks associated with smoking.

In some ways, a policy level conflict exists between U.S. trade goals and health policy objectives in regard to the export of tobacco products. On the one hand, federal resources are used to facilitate the export of U.S. tobacco and tobacco products, while on the other hand, the federal government has directed a major domestic antismoking effort and is a participant in the international antismoking movement.

Because of the importance of the issues address in this report and the wide interest in these matters, we plan to distribute copies of the report to each member of Congress, appropriate congressional committees, and other interested parties.

Unless you publicly announce its contents, we plan no further distribution of this report until 11:00 a.m., May 17. At that time, as agreed with your offices, we will distribute this report to other congressional offices and will make it available to additional interested parties.

The report was prepared under the direction of Allan I. Mendelowitz, Director, International Trade, Energy, and Finance Issues. If you have any questions on the report, he can be reached on (202) 275-4812. Other major contributors to this report are listed in appendix V.

Frank C. Conahan
Assistant Comptroller General

List of Requesters

The Honorable Henry Waxman
Chairman, Subcommittee on Health
and the Environment
Committee on Energy and Commerce
House of Representatives

The Honorable Pete Stark
Chairman, Subcommittee on Health
Committee on Ways and Means
House of Representatives

The Honorable Chet Atkins
The Honorable Michael A. Andrews
The Honorable Jim Bates
The Honorable Barbara Boxer
The Honorable Richard Durbin
The Honorable James Hansen
The Honorable Mel Levine
The Honorable Mike Synar
The Honorable Robert Torricelli
The Honorable Pete Visclosky
House of Representatives

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Executive Summary

Purpose

In recent years, the U.S. government has been successful in negotiating the removal of unfair foreign trade barriers that restricted the export of U.S. cigarettes. These efforts have been controversial because of the adverse health effects associated with smoking.

GAO was requested by the Chairman of the House Subcommittee on Health and the Environment, Committee on Energy and Commerce; the Chairman of the Subcommittee on Health, Committee on Ways and Means; and other members of Congress to review the role of the U.S. government in helping the export of tobacco and tobacco products and the health-related implications of these activities.

Background

U.S. manufacturers had tried for many years to export their cigarettes to such protected markets as Japan, Taiwan, South Korea, and Thailand. However, their efforts were only minimally successful. Largely through the targeted efforts of the U.S. Trade Representative, beginning in 1985 the governments of Japan, Taiwan, and South Korea agreed to substantially remove their cigarette trade barriers, including high import tariffs, discriminatory taxes, and discriminatory marketing and distribution restrictions. U.S. negotiations with Thailand are currently in progress.

Since 1964, the United States has actively pursued a domestic policy to discourage smoking. As a result, the incidence of smoking among adults in the United States has decreased significantly. In addition, the United States has also supported international antismoking efforts.

Results in Brief

U.S. cigarette companies faced clearly identified foreign government imposed trade barriers in marketing their product. U.S. government assistance was provided in removing such unfair foreign trade barriers, consistent with current trade policy criteria.

U.S. Trade Representative officials maintain that because cigarettes are legally sold in the United States and abroad, they should be treated no differently than other products in trade negotiations. The Trade Representative's policy is that when petitioned by an industry with a legally sound complaint dealing with unfair trade practices, it must act on the petition.

The health consequences of cigarette exports are not considered when developing trade policy, and the Department of Health and Human Services plays no role in the interagency trade policy formulation process.

In some ways, a policy level conflict exists between U.S. trade goals and health policy objectives in regard to the export of tobacco products. On the one hand, federal resources are used to facilitate the export of U.S. cigarettes, while on the other hand, the federal government has directed a major domestic antismoking effort and is a participant in the international antismoking movement.

Principal Findings

Overall, GAO found that U.S. policy and programs for assisting the export of tobacco and tobacco products work at cross purposes to U.S. health policy and initiatives, both domestically and internationally. GAO's findings on tobacco trade and health-related implications reflect this dichotomy.

Trade in Tobacco Products

The United States presently has a favorable balance of trade in tobacco and tobacco products. In 1989, the U.S. tobacco and tobacco product trade surplus was $4.3 billion, up from $2 billion in 1986. U.S. tobacco growers are benefiting from the recent increases in cigarette exports, despite reduced domestic cigarette consumption, and tobacco production has increased to meet growing export demand. In addition, three federally funded market development programs assist the export of U.S. tobacco. They are the Cooperator Market Development Program, the Targeted Export Assistance Program, and the Export Credit Guarantee programs.

In its efforts to remove unfair foreign trade barriers, the U. S. Trade Representative did not appear to give preferential treatment to tobacco products over other items. However, it is difficult to quantify these efforts for comparison purposes because the U.S. Trade Representative pursues multiple cases concurrently and does not track time spent on individual cases.

GAO found that U.S. government representational activities on behalf of U.S. cigarette companies in the four targeted Asian nations have been extensive. Although the negotiations to remove foreign barriers to U.S. cigarette exports were sensitive, at this time there seem to be no long-term adverse implications for U.S. relations with the four targeted countries.

GAO found few reported incidents of U.S. cigarette companies violating cigarette trade agreements and industry codes.

Health Implications of Cigarette Exports

The Surgeon General has determined that smoking is hazardous to health, and the U.S. government through the Department of Health and Human Services actively works to discourage smoking internationally, as well as domestically. Over the past 25 years, Congress has enacted a number of laws concerning the health hazards of cigarettes that include requiring health warnings on cigarettes, banning all cigarette television and radio advertisements, and banning smoking on domestic flights.

The U.S. government supports the World Health Organization and its smoking prevention programs. Also, the Overseas Private Investment Corporation, a government agency, has made a policy decision to deny assistance to U.S. cigarette companies wishing to promote their enterprises overseas because of the adverse health effects of smoking. Nevertheless, health issues were not considered during negotiations for the removal of foreign trade barriers to the export of U.S. cigarettes. And, until recently, the Department of Health and Human Services has been discouraged from participating in the cigarette trade policy process. A high level Department of Health and Human Services official informed GAO that the Department of Health and Human Services was invited to participate in the current market access case in Thailand and declined on the basis that it perceives cigarette export issues as a trade rather than a health matter.

Statistics show that the prevalence of smoking in Japan, Taiwan, and South Korea is higher than in the United States. In the past decade, an antismoking movement has been established in the four targeted Asian countries. While the smoking rate in Japan has gradually declined, cigarette consumption in Taiwan and South Korea has increased since the removal of barriers to U.S. cigarette exports. Since the opening of the Asian cigarette markets, cigarette advertising and promotional activities have increased appreciably in terms of volume and sophistication as a result of the competitive marketing of U.S. cigarettes. In addition, socioeconomic factors, such as rapid rises in disposable income and more women entering the work force, are generally considered to have played a role in increasing cigarette use in certain Asian countries.

Matters for Congressional Consideration

The U.S. government's role in helping the export of cigarettes and other tobacco products raises important policy issues. On the one hand, the government is committed to help U.S. exporters overcome foreign market barriers to the export of legal products. On the other hand, the U.S. government has determined that smoking is hazardous to health and is actively working to reduce smoking and the use of other tobacco products both domestically and abroad.

If the Congress believes that trade concerns should predominate, then it should do nothing to alter the current trade policy process. The U.S. government can simultaneously continue to actively help U.S. cigarette exporters overcome foreign trade barriers and promote awareness of the dangers of smoking and further restrict the circumstances in which smoking may take place.

If Congress believes that health considerations should have primacy, the Congress could grant the Department of Health and Human Services the responsibility to decide whether to pursue trade initiatives involving products with substantial adverse health consequences.

Alternatively, rather than having one policy dominate, the Congress could specifically require that health matters be included in the interagency trade policy process so that health issues receive some consideration on a case-by-case basis. Such a change would necessitate that the Department of Health and Human Services actively participate in the interagency trade policy decision-making process.

Agency Comments

As requested, GAO did not obtain agency comments on a draft of this report. However, during the course of this review, GAO did discuss the matters addressed in this report with U.S. government agencies and tobacco industry officials.

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Abbreviations

CCC	Commodity Credit Corporation
CEA	Cigarette Export Association
GAO	General Accounting Office
GATT	General Agreement on Tariffs and Trade
HHS	Department of Health and Human Services
JASH	Japan Action on Smoking and Health
KASH	Korean Association on Smoking and Health
OPIC	Overseas Private Investment Corporation
USDA	United States Department of Agriculture
USTR	United States Trade Representative
WHO	World Health Organization

Introduction

Background

U.S. trade policy for tobacco and tobacco products is the same as that for any other legal product that is traded between countries. A U.S. exporter of legal products faced with unfair foreign trade barriers can turn to the U.S. government for assistance in removing those barriers. Hence, such assistance is available to U.S. cigarette exporters.

U.S. cigarette companies tried for many years to expand their sales to Japan, South Korea, Taiwan, and Thailand, whose markets were substantially closed to cigarette imports by government imposed barriers and monopolies.[1] After generally unsuccessful efforts to gain access to those markets, the U.S. cigarette companies sought the assistance of the U.S. Trade Representative (USTR) under section 301 of the Trade Act of 1974, as amended,[2] in eliminating these alleged unfair trade barriers to U.S. cigarette exports.

Access to these markets is important to the U.S. cigarette companies because of the significant and steady decline in U.S. cigarette consumption. (It is also important to U.S. farmers because tobacco is their sixth largest cash crop, and 85 percent of tobacco is used in the manufacture of cigarettes. See app. I for details on the global tobacco situation and how U.S. cigarette exports benefit the tobacco grower.) Since 1981, domestic consumption of cigarettes has fallen by 17 percent. In 1989, there was a 5-percent decline in U.S. cigarette consumption from the previous year. These decreases are attributed to (1) increases in cigarette prices (excluding taxes) of over 200 percent since 1980, (2) greater concern over the health effects of smoking, (3) higher taxes on cigarettes, (4) further public smoking restrictions, and (5) the growing social unacceptability of smoking.

Despite the fact that cigarettes meet current trade policy criteria, the USTR's pursuit of the cigarette section 301 cases is controversial because of the health risks associated with smoking. The Department of Health and Human Services (HHS) has issued several Surgeons General's reports warning about the harmful effects of smoking. HHS is also directing a number of domestic antismoking efforts. In addition, the United States participates on a multilateral level with the World Health Organization (WHO) to develop greater antismoking and health awareness programs throughout the world.

[1]These monopolies controlled the manufacture, and to varying degrees, the supply and distribution of cigarettes in each of these countries.

[2]A section 301 action is authorized by the 1974 Trade Act, as amended, and allows the USTR to negotiate for the removal of foreign trade barriers.

Thus, we have a situation in which one government body, USTR, negotiates for the removal of import restrictions on U.S.-produced cigarettes as provided for by U.S. trade law. At the same time, another government body, HHS, attempts to decrease the use of cigarettes in the United States and abroad.

Action Against Foreign Trade Barriers

Section 301 of the Trade Act of 1974[3] has been used 6 times to address unfair foreign trade barriers affecting the export of cigarettes and other tobacco products. Cigarettes were viewed as well suited for section 301 cases because the U.S. cigarette companies faced clearly identified, government-imposed trade barriers in Japan, Taiwan, South Korea, and Thailand, and U.S. cigarettes are very competitive in world markets.

Based on presidential direction, USTR initiated section 301 actions against Japan in 1985 and Taiwan in 1986. USTR initiated a section 301 action against Korea in 1988 after evaluating a petition from the U.S. Cigarette Export Association (CEA).[4] These section 301 actions were taken in the context of rising trade friction with these countries and growing U.S. trade deficits with them. By 1988, USTR had successfully negotiated agreements with the targeted countries to open their markets to U.S. cigarette exports. For example, in Japan, where an agreement was reached in 1986, the U.S.' share of the Japanese cigarette market increased from 3 percent to over 13 percent in a 4-year period. During the period 1986-1989, the U.S.' trade surplus in tobacco and tobacco products increased from $2 billion to $4.3 billion. (See app. II for additional details.)

In May 1989, in response to another cigarette industry petition, the USTR initiated a section 301 action against Thailand with the objective of eliminating Thai barriers against the importation of U.S. cigarettes. In this case, two of the four main issues have been referred to the General Agreement on Tariffs and Trade[5] (GATT) for dispute resolution. The deadline for resolving this section 301 case is November 1990.

[3]Through February 1990, the USTR had initiated 79 section 301 trade cases.

[4]The U.S. Cigarette Export Association was formed in 1981 by Philip Morris, Inc., R.J. Reynolds Tobacco Company, and Brown & Williamson Tobacco Corp. The association was formed under provisions of the Webb-Pomerene Act of 1918, which permits U.S. companies to form associations to compete more effectively in foreign markets. The act provides qualified exemptions from prosecution under U.S. antitrust laws for associations formed for the purpose of, and actually engaging in, export trade when such associations do not interfere with domestic commerce.

[5]The GATT is the multilateral agreement whose rules govern trade between member nations, technically referred to as contracting parties.

Health Implications of U.S. Cigarette Entry Into Asian Markets

On gaining access to the markets of Japan, Taiwan, and South Korea, the U.S. cigarette manufacturers have achieved a measure of success in taking market share from the national cigarette monopolies. In part, in response to the growing competition from U.S. companies, advertising has increased in volume and sophistication. Many health advocates believe that these cigarette advertisements have also grown in sophistication and are targeting segments of the population in which the incidence of smoking has traditionally been very low, e.g., women.

Concurrent with this expanded cigarette marketing, there have been increases in antismoking efforts overseas. For example, all four of the targeted countries require health caution labels to be placed on packs of cigarettes produced for domestic consumption. Also, WHO has stepped up its efforts to spread the smoking awareness message throughout the world. The United States participates in WHO and supports its efforts to develop greater antismoking and health awareness programs.

In Japan, Taiwan, South Korea, and Thailand, there are growing antismoking activities and organizations. Some believe these activities represent serious efforts to reduce smoking because of the adverse health effects. Others contend that antismoking movements were exploited by local governments in their efforts to protect local markets and the associated jobs and government revenue.

Objectives, Scope, and Methodology

We were requested by the Chairman of the House Subcommittee on Health and the Environment, Committee on Energy and Commerce, Henry Waxman, and the Chairman of the House Subcommittee on Health, Committee on Ways and Means, Pete Stark, and other members of Congress to review the role of the U.S. government in the export of tobacco and tobacco products and the related health implications of such exports. The other requesters are Chet Atkins, Mike Andrews, Jim Bates, Barbara Boxer, Richard Durbin, James Hansen, Mel Levine, Mike Synar, Robert Torricelli, and Pete Visclosky.

We examined the formulation and implementation of U.S. trade policy as it relates to the export of tobacco and tobacco products. We reviewed U.S. government programs that assist U.S. tobacco exporters and the government assistance provided to U.S. cigarette companies to gain access to restricted foreign markets.

We reviewed the extent to which foreign policy ramifications are considered when developing trade policy and the implications that the cigarette trade actions have had for U.S. relations with targeted Asian countries. We sought to determine whether the USTR gives preferential treatment to tobacco products in the trade negotiations process, and whether U.S. cigarette exporters comply with marketing restrictions imposed in the newly opened Asian markets.

We also assessed whether increased U.S. cigarette exports have benefited the U.S. tobacco growers and what impact tobacco exports have had on the U.S. tobacco and tobacco product trade balance.

We examined to what extent health issues were given consideration in the section 301 interagency process. We attempted to analyze the marketing approaches of the U.S. cigarette companies to determine whether increased advertising and promotional activities have had an impact on smoking prevalence in Japan, Taiwan, and South Korea. In addition, we reviewed the status of the antismoking movement overseas and whether it has had an impact on health awareness and smoking in the targeted countries.

To obtain information to respond to these issues in the United States, we reviewed documents and interviewed officials of the U.S. Trade Representative, the Departments of Commerce, Agriculture, State, and Health and Human Services; the American Cancer Society; the World Health Organization; miscellaneous antismoking and health advocacy groups; representatives of the flue-cured and burley tobacco industries, Tobacco Associates, the U.S. Cigarette Export Association, and the three major U.S. cigarette exporters—Philip Morris, Inc., R.J. Reynolds Tobacco Company, and Brown & Williamson Tobacco Corp.

In Japan, South Korea, Taiwan, and Thailand, we interviewed representatives of the U.S. Departments of State, Agriculture, and Commerce; foreign governments' ministries of Foreign Affairs, Health, Agriculture, Commerce/Trade, and Finance; the tobacco monopolies; tobacco trade organizations; antismoking and health organizations; and foreign tobacco farmer representatives. We also met with the European Community's health organizations and the United Nations Food and Agriculture Organization.

Our access to documents relating to section 301 cases was limited to the extent that we did not see documents developing the U.S.' negotiating positions or the USTR's recommendations to the President. However, this

lack did not adversely affect the overall results of our work. Our work was conducted during the period March 1989 through April 1990 in accordance with generally accepted government auditing standards.

As requested, we did not obtain agency comments on a draft of this report. However, during the course of this review, we did discuss the matters addressed in this report with federal agency and tobacco industry officials.

Access for U.S. Tobacco Products in Certain Restricted Asian Markets

A fundamental objective of U.S. trade policy is to achieve the elimination of unfair foreign trade barriers that restrict U.S. exports. This objective applies equally to all products legally sold in the United States and abroad. For years, U.S. cigarettes were blocked from certain Asian markets, which were dominated by government-controlled monopolies. To maintain their monopolies, these governments largely prevented the import of foreign cigarettes and certain tobacco products. Import barriers included high import tariffs, discriminatory taxes, and discriminatory marketing and distribution restrictions. The U.S. government responded to the problems by investigating the alleged market restrictions and negotiating with the foreign governments to remove these barriers. To date, the United States has gained access to cigarette markets in Japan, Taiwan, and South Korea, and is involved in negotiations to gain access in Thailand.

USTR representatives told us that as long as cigarettes remain a legal commodity in the United States and abroad, there is no legal basis to deny cigarette manufacturers assistance in gaining market access. USTR officials further report that they only seek national treatment for U.S.-produced products in their negotiations for market access. That is, the U.S.-produced product should be treated no differently in the foreign market than its domestically produced and marketed counterpart. For example, the Thailand tobacco monopoly produces and sells cigarettes in Thailand subject to certain marketing restrictions. A senior USTR official explained that U.S.-produced cigarettes should be treated equally—they should be given the same market access and be subject to the same marketing restrictions as the monopoly-produced cigarettes.

Formulation of U.S. Trade Policy

U.S. trade policy is formulated through an interagency process that involves three interagency committees—the cabinet-level Economic Policy Council, the subcabinet-level Trade Policy Review Group, and the Trade Policy Staff Committee. The U.S. Trade Representative chairs both the Group and the Committee. Through the interagency process, information is gathered from a number of federal agencies that are supported by industrial and agricultural technical advisory committees that, in turn, communicate industry's concerns and interests to U.S. trade policy officials. The Department of Health and Human Services is not included in this interagency process.

Section 301 Process

Section 301 of the Trade Act of 1974, as amended, allows industry to ask the U.S. government for help in removing unfair foreign trade barriers. Section 301 authorizes the USTR to investigate and negotiate for the removal of these foreign trade barriers. A strong section 301 case includes the presence of clear-cut foreign government-imposed import restrictions and involves a U.S. export that is competitive in foreign markets.

USTR has the authority to decide whether to initiate a section 301 case. However, in practice, the USTR consults with the interagency section 301 committee, a subcommittee of the Trade Policy Staff Committee, when determining whether to accept a petition or to self-initiate a case. The interagency 301 committee is chaired by a USTR representative and is composed of representatives from the Departments of Commerce, State, Treasury, Agriculture, Labor, Justice, and Defense; the Council of Economic Advisers; and the Office of Management and Budget.

Once USTR initiates a section 301 action, it has up to 18 months to reach a mutually acceptable resolution with the targeted country. If negotiations are not successful, USTR may be required to take retaliatory measures including the denial of trade agreement concessions or the imposition of import restrictions on selected products from the targeted country. Agreements to remove restrictions on foreign market imports, without resort to retaliatory action, have been reached with the governments of Japan, Taiwan, and South Korea in the tobacco product cases. USTR is currently pursuing a section 301 action against Thailand for the removal of its cigarette import barriers.

In certain cases, trade disputes may be referred to the GATT for resolution. Certain issues in the Thailand section 301 cigarette case are currently being pursued through GATT's procedures for settling disputes.

Through February 1990, USTR had initiated 79 section 301 trade cases. These cases run the gamut from agricultural products, such as alleged quantitative restrictions on the import of U.S. leather in Japan, to alleged violations of intellectual property right protection, such as Argentina's denial of patent protection for U.S. pharmaceuticals. Six of the cases involve tobacco products. Three of these actions were filed against Japan for the removal of its import restrictions on cigars, pipe tobacco, and cigarettes, respectively. One 301 action was filed against South Korea and another against Thailand for removal of their cigarette import restrictions. The 301 action against Taiwan was for the removal

of its import barriers on U.S. cigarettes, wine, and beer. USTR self-initiated the cigarette 301 actions against Japan and Taiwan, and tobacco product trade associations petitioned USTR for initiation of the cigarette 301 actions against Japan for cigars and pipe tobacco and against South Korea and Thailand for cigarettes.

Status of Tobacco Product Section 301 Cases

Japan-Cigars—The Cigar Association of America filed a petition with the USTR on March 14, 1979, alleging that Japan imposed (1) unreasonable import restrictions and taxes on imported cigars, and (2) discriminatory restrictions on the marketing, advertising, and distribution of imported cigars. This case was later combined with the Japan pipe-tobacco case discussed below.

Japan-Pipe Tobacco—The Associated Tobacco Manufacturers filed a petition on October 22, 1979, alleging that Japan set unreasonable prices for imported pipe tobacco and restricted its distribution and advertising. In November 1979, the USTR consolidated this case with the Japan cigar case discussed above, alleging that the market restrictions were identical. The United States and Japan reached an agreement that decreased the market restrictions and reduced the import duty on foreign cigars and pipe tobacco. USTR terminated the 301 investigation on January 6, 1981.

Japan-Cigarettes—On September 16, 1985, at the direction of the President, USTR initiated a section 301 action against Japan because of the restrictions it imposed on the import of U.S.-produced cigarettes. These barriers included high tariffs on imported cigarettes, monopoly restrictions on the manufacture of foreign cigarettes in Japan, and restrictions on the distribution of foreign cigarettes. On October 3, 1986, the United States and Japan signed an agreement that included the elimination of the cigarette tariff, the discriminatory excise tax payment procedures, and discriminatory distribution practices. On October 6, 1986, the President approved the agreement and suspended the section 301 investigation.

Taiwan-Cigarettes—On October 27, 1986, the President determined that the restrictions imposed by Taiwan on the distribution and sale of U.S. beer, wine, and tobacco products allowed action to be taken under section 301. He directed USTR to propose appropriate countermeasures. On December 12, 1986, Taiwan signed an agreement to discontinue the unfair practices. As a result, USTR announced that no retaliatory action would be proposed.

South Korea-Cigarettes—On January 22, 1988, the CEA filed a petition complaining that the South Korean government, in conjunction with the Korean Monopoly Corporation, unreasonably denied the U.S. cigarette companies access to the Korean cigarette market. On February 16, 1988, the USTR initiated an investigation and requested consultations with the government of Korea. USTR signed an agreement with Korea on May 27, 1988, providing open, nondiscriminatory access to the Korean cigarette market. Based on this agreement, USTR terminated its investigation on May 31, 1988.

Thailand-Cigarettes—On April 10, 1989, the CEA filed a petition alleging that the Royal Thai government and its instrumentality, the Thailand Tobacco Monopoly, were engaging in practices that were unreasonable or discriminated against the import of U.S. cigarettes. The petition requested the removal of all restrictions on the importation and sale of cigarettes, removal of discriminatory cigarette import duties and taxes, and the right to distribute, advertise, and promote cigarettes in Thailand. USTR initiated an investigation on May 25, 1989. Consultations with the Thai government were initiated on July 31, 1989, and a public hearing was held in Washington on September 19, 1989. At this hearing, health emerged as an issue in the case, with the appearance of witnesses who represented U.S. and Thai health advocacy groups. On December 22, 1989, USTR submitted the import prohibition and discriminatory taxation issues to GATT for formal dispute resolution. Consultations were held with the Thais in Geneva on February 5-6, 1990. The deadline by which dispute settlement must be concluded is November 25, 1990.

HHS Discouraged From Participation in Cigarette Trade Policy Process Formulation

HHS is not precluded by law from participating in trade policy matters. However, HHS has not been a part of the interagency trade policy formulation process and, therefore, played no role in the development of the U.S.' position in the section 301 cigarette cases. When HHS activities appeared to intrude on the trade process, they were discouraged. For example, in February 1988, the Interagency Committee on Smoking and Health, a committee established in 1984 under the Comprehensive Smoking Education Act and chaired by the Surgeon General, attempted to hold an interagency meeting entitled "Tobacco Trade Policies." The Surgeon General invited representatives from the Departments of State, Commerce, and Agriculture to speak on the health implications of recent U.S. efforts to open foreign markets to U.S. cigarettes. However, White House officials, some members of Congress, and USTR officials objected to the meeting, claiming that the Committee had no authorization to analyze a trade issue. Consequently, the meeting title was changed to

"Tobacco and Health Internationally," and the representatives from State, Commerce, and Agriculture did not attend.

A high level HHS official told us that HHS was invited to participate in the Thai section 301 cigarette case but chose not to because HHS' position is that cigarette exports is a trade issue, not a health issue, and because HHS officials were too busy with other government activities in the United States.

Section 301 Process Allows for Consideration of Implications for U.S. Foreign Relations

The implications of section 301 actions for U.S. relations with targeted countries are considered during the section 301 process. The State Department has a representative on USTR's section 301 investigative committee and on the bilateral negotiating team. Representatives from State or from any of the other 301 committee member agencies are free to bring their concerns to the attention of the section 301 committee or the negotiating team. Although there is no legal requirement to do so, a USTR official told us that, as a practical matter, it must consider the opinions of other section 301 committee or negotiating team members. According to a USTR official, if there is a major foreign policy concern, it may be sent to higher level interagency committees and, if necessary, to the President for resolution.

Views of Government Officials on the Impact of Cigarette Section 301 Actions on Foreign Relations

We found that in general, government officials from Japan, Taiwan, and South Korea viewed the cigarette section 301 actions as the culmination of just another irritating trade dispute with the United States. Although the issue was sensitive during the negotiations, the disputes have been substantially resolved and replaced by other trade problems. At this time, there appear to be no long-term adverse implications for U.S. relations with any of the targeted countries.

The current Thai cigarette section 301 case appears to have attracted the attention of Thai and international antismoking and health advocacy groups and the media to a greater extent than its predecessors. However, it is unclear whether, as a result, this case will have a more significant impact on U.S/Thai bilateral relations compared to bilateral relations with other countries targeted under section 301.

Japan

A U.S. embassy official who was intimately involved in the section 301 negotiations told us that the U.S.' image in Japan has not been adversely affected by the cigarette section 301 action. He admitted that when the

section 301 action was active, it was an irritant in U.S. relations with Japan, but only to an extent similar to other section 301 actions against Japan.

A Japanese Foreign Ministry official told us essentially the same thing. He said that the cigarette section 301 action was initially sensitive because it was among the first section 301 actions against Japan. However, since the conclusion of the cigarette section 301 agreement, other equally painful trade disputes with the United States have emerged; Japan considers the cigarette case to be closed. The foreign ministry official said that currently the "public outcry" against U.S. cigarettes is fairly weak. However, he speculated that the Japanese public may revive the issue to symbolize its displeasure if the United States continues to pursue its aggressive trade policies with Japan.

Taiwan

An official with the Washington, D.C., office of the American Institute in Taiwan believes that the section 301 cigarette case has not had a lasting negative impact on U.S./Taiwan relations. However, the case was sensitive because of the substantial employment and government revenue derived from the cigarette monopoly and because of a growing antismoking movement in Taiwan. Further, Taiwan is in the midst of a democratization process with emotional and popular appeal. The cigarette section 301 action has given the opposition parties an issue with an anti-American slant. The section 301 case projected a negative U.S. image in Taiwan newspapers and led to inflammatory statements by a major Taiwan antismoking group.

Authorities with Taiwan's Coordination Council for North American Affairs told us that the United States should not be promoting unhealthy products such as cigarettes. Thus, the U.S. cigarette section 301 action against Taiwan was unwise and has not enhanced the U.S.' image in Taiwan. However, the Taiwan officials noted that the cigarette section 301 agreement has had little long-term effect on U.S./Taiwan relations.

South Korea

U.S. embassy officials in South Korea claim that the cigarette section 301 action against Korea has not had a negative long-term effect on relations between the United States and Korea. They view the section 301 cigarette agreement as a market-opening agreement similar to other trade agreements. They believe that security issues are still the overriding concern in the U.S./Korean relationship.

A South Korean foreign ministry official told us that the cigarette section 301 cigarette agreement did not, in and of itself, have a significant impact on U.S./South Korean relations. The official stated that it was just one of "many painful experiences" that Korea has recently had with the United States on trade issues. Nevertheless, he claimed the cigarette agreement had a negative impact on Korean tobacco growers, and their frustrations might cause political disturbances and affect future elections.

Thailand

The section 301 action against Thailand is an open case with ongoing negotiations. It has much in common with the earlier cases, except that the growing Thai antismoking movement has been used as part of the Thai effort to strengthen its hand in the negotiations. The United States views the dispute as a trade action. The Thais, on the other hand, view it as a health and political issue, as well. The Thais claim that the United States has a double standard in reference to cigarettes, i.e., that the United States is pursuing an antismoking effort domestically while at the same time "pushing" cigarettes on countries like Thailand. Because negotiations in this case are still proceeding, any current assessment of its impact on U.S./Thai relations would be purely speculative and inappropriate at this time.

Representational Activities on Behalf of U.S. Cigarette Companies in Targeted Section 301 Countries

A number of parties have represented the interests of U.S. cigarette exporting companies in their efforts to open restricted Asian markets for U.S. tobacco products. These parties have included (1) Members of Congress; (2) congressional committee staff members; (3) executives of major U.S. cigarette exporting companies; and (4) former senior White House officials serving as private consultants.

Congressional Support

Several Congressmen have demonstrated their support for U.S. government efforts to gain access to foreign cigarette markets. These Congressmen have corresponded and met with executive branch officials as well as with government officials of the four targeted countries. Prior to negotiations with Korea, for example, at least 28 Senators and 4 Representatives signed letters to senior administration officials urging aggressive action to open the Korean cigarette market. These letters cited the incompatibility of a large Korean trade surplus with the United States and a Korean cigarette market virtually closed to U.S. exports.

There were also several meetings between Congressmen and government officials from Taiwan and Thailand prior to and during market-opening consultations. For example, at least three of the congressional delegations that visited Thailand between early December 1989 and February 1990 raised the issue of cigarette exports with Thai officials.

Congressional committee staff members have also met with foreign government officials. In October 1989, for example, two House Committee staff members met with officials from the Thai Ministry of Finance. The staffers told the Thai government officials that there was no likelihood of Congress passing proposed legislation that would preclude the use of section 301 on behalf of cigarette exporting companies.

USTR and State Department Officials Do Not Object to Congressional Representational Activities

USTR and State Department officials were not opposed to congressional representational activities. A USTR official claimed that she did not object to these activities provided that they were consistent with USTR's negotiating position. A State Department official contended that the information conveyed to foreign officials, as during the October 1989 visit cited above, "served to reinforce what the embassy and Washington have been telling the Thais on cigarettes."

Representational Activities by U.S. Cigarette Industry

U.S. cigarette exporting companies have sought to influence cigarette trade policies in several ways. Senior executives from the three major U.S. cigarette exporting companies have met frequently with U.S. and foreign government officials. Also, the CEA has offered market and technical information to U.S. government officials and trade negotiators. Moreover, the two largest U.S. cigarette exporting companies have retained former senior White House officials as consultants to promote their interests in Taiwan and Korea.

The U.S. Cigarette Export Association

The CEA is a not-for-profit corporation chartered in Delaware in 1981. Its membership is comprised of the three largest U.S. cigarette exporters—Philip Morris, Inc., R.J. Reynolds Tobacco Company, and Brown & Williamson Tobacco Corp. According to its by-laws, the CEA "shall take such measures as it deems appropriate to improve the competitive position of U.S.-produced cigarettes in foreign markets."

CEA executives met frequently with U.S. government officials during the cigarette market-opening negotiations with all four of the targeted countries. These meetings have taken place at U.S. embassies and in Washington. In addition to facilitating the flow of technical and market information to U.S. government officials, these meetings served to maintain the high visibility of cigarette trade issues. CEA executives have also met with senior foreign government officials. In at least one instance, a CEA executive met with the Prime Minister of Thailand.

Former Senior White House Officials Employed as Consultants by U.S. Cigarette Companies

Two of the major U.S. cigarette exporting companies have retained former senior White House officials to represent their interests in gaining access to foreign markets. The consultants met with senior government officials in Taiwan and Korea and discussed possible commercial ventures between their client companies and the local tobacco monopolies. These discussions were generally unsuccessful, and the consulting arrangements were terminated in the mid-1980s. Such representational activities by former senior White House officials are not prohibited by law.

USTR Does Not Appear to Give Preferential Treatment to Tobacco Products in Section 301 Actions

We have found no evidence to indicate that USTR has given preferential treatment to the section 301 tobacco product cases. Section 301 does not exclude tobacco products from its application. The first section 301 case, dealing with cargo preference issues, was based on an industry petition filed on July 1, 1975. It was not until more than 3 1/2 years later, on March 14, 1979, that the first tobacco product section 301 petition was filed with USTR—this became the seventeenth section 301 case.

The 6 tobacco product cases amount to less than 8 percent of the 79 total section 301 cases and about 16 percent of the 38 agricultural product cases initiated through February 1990. USTR self-initiated 17 (about 22 percent) of the total 79 section 301 cases. USTR self-initiated two of the six tobacco product cases based on explicit directions from the President. This amounts to a little less than 12 percent of the 17 self-initiated cases. Initiation of the remaining four tobacco product cases was based on USTR acceptance of industry petitions that met the legal requirements for section 301 action. These 4 cases represent less than 7 percent of the total 62 cases initiated through industry petitions.

USTR does not maintain records that would allow us to measure the time and effort that they have spent on each of the section 301 cases. At best any such measures would be imprecise. Because trade cases vary in

their complexity, they require varying amounts of USTR time and other resources for their resolution. Moreover, during the course of a given section 301 action, negotiations and consultations may encompass issues related to more than one trade case, further complicating an accurate measure of resource expenditure.

USTR Officials Claim That the Cigarette Section 301 Actions Have Not Received a Disproportionate Share of USTR's Resources

USTR did not appear to give preferential treatment to tobacco products over other items in its efforts to remove unfair foreign trade barriers. USTR officials said that they have not given preferential treatment to the resolution of the cigarette section 301 cases and claim that they have not spent a disproportionate share of their resources on these cases. We found no basis on which to disagree with this statement. According to USTR officials, it is USTR's policy that if it is petitioned by an industry with a legally sound complaint dealing with unfair trade practices, it would be remiss in its responsibility not to aggressively act on the petition. The officials told us that tobacco products are legally sold in foreign markets and, when it comes to trade negotiations, they should be treated no differently than other products. Even if cigarettes were to be viewed as toxic substances, there are no official guidelines that preclude the use of section 301 to remove existing foreign import restrictions. For example, certain pharmaceuticals and pesticides can be viewed as toxic chemicals; nevertheless, they are traded and can take advantage of the section 301 process.

An assistant U.S. Trade Representative involved in the cigarette section 301 actions told us that USTR is a complaint-driven organization, and it does not look for extra business. He noted that when a section 301 case is active, USTR continues to equally push its agenda for other products and commodities. For example, in the case of Taiwan, this agenda included handling merchandise trade problems, service industry problems such as life insurance, the customs valuation system, and protection of intellectual property rights.

A USTR official stated that if the petitioner's allegations pass "statutory muster" (i.e., show clear-cut discriminatory import barriers), the case is difficult to turn down. This decision was the case in both the South Korea and Thailand cigarette section 301 industry petitions. The Taiwan cigarette section 301 case, on the other hand, was self-initiated by USTR because Taiwan failed to abide by an initial nonsection 301 agreement.

USTR self-initiated the cigarette section 301 action against Japan on September 16, 1985, based on instructions from the President. As related in

his September 7, 1985, radio address, the President instructed USTR "to begin investigations of unfair trading practices on the part of our trading partners." The President announced trade initiatives against several countries, including an investigation of restrictive tobacco product import practices of Japan. An assistant U.S. Trade Representative told us that in late 1985, the administration was under a lot of pressure from Congress, due in part to the growing trade deficit, to demonstrate that it was taking more aggressive action throughout the world to market U.S. commodities. Thus, the government began an aggressive campaign to solve longstanding trade problems. The Trade Policy Review Group identified obvious unfair trade practices where the U.S. government could self-initiate and aggressively pursue section 301 actions.

Section 301 Actions Were a Last Resort

The U.S. cigarette companies had been trying through various means to gain access to the restricted cigarette markets for several years in many Asian countries. They had limited success in establishing commercial arrangements in some of these countries, but had been substantially frustrated in their efforts to gain any significant market access in Japan, Taiwan, Korea, and Thailand. According to USTR officials, the cigarette section 301 actions were taken as a last resort and have been substantially successful in removing the government-imposed import restrictions.

Few Reported Instances of U.S. Cigarette Companies Violating Cigarette Trade Agreements and Applicable Industry Code Provisions

In the three targeted Asian countries, there were only a few reported incidents of U.S. cigarette companies not complying with the section 301 trade agreements, marketing restrictions, or applicable industry codes. Health advocacy groups and government authorities in Taiwan and Korea provided us with some examples of alleged violations in those countries. Moreover, we observed some possible violations by U.S. cigarette companies of the industry's own self-regulatory code of standards in Japan. (See app. IV for a more detailed description of cigarette market restrictions in Japan, Taiwan, and South Korea.)

In Japan, we observed that both U.S. cigarette companies and the Japanese tobacco monopoly engage in advertising and promotional practices that possibly violate certain industry code provisions. For example, a U.S. cigarette company placed a billboard containing a picture of a young woman, who appears to be smoking, near the entrance to a women's college near Tokyo. The Japan Tobacco Institute Code prohibits the targeting of women and children in cigarette advertisements.

Alleged violations of the section 301 agreement in Taiwan appear to result from conflicting interpretations of certain provisions of the agreement. For example, a U.S. cigarette company planned to promote a brand of cigarettes by holding a drawing for a luxury car. Although the agreement allows the use of certain sales promotions, Taiwan authorities objected primarily because they believed the prize was too costly to qualify as a promotional item. The conflict stemmed from nuances in the interpretation of the Chinese language version of the agreement. In another instance, the Taiwan tobacco monopoly alleged that U.S. cigarette companies violated the agreement's point-of-sale provisions by distributing free cigarettes at unlicensed establishments, such as discotheques and nightclubs frequented by young people. American government officials in Taiwan claimed that this practice only occurred immediately after the agreement and has since been discontinued.

Alleged violations of the section 301 agreement in South Korea include an accusation by Korean government officials that a U.S. cigarette company held a series of promotional beach concerts that targeted young people. The agreement with South Korea prohibits advertisements targeting women and children. U.S. embassy officials claimed that these concerts did not violate the agreement because people of all ages go to the beach. The U.S. cigarette company cancelled many of the concerts. On the other hand, U.S. cigarette companies claimed that the tobacco monopoly interferes with their marketing activities by harassing their local retailers, tearing down point-of-sale signboards, and disrupting their promotional activities.

Regulatory Environment Differs in the Three Targeted Countries

The governments of Japan, Taiwan, and South Korea attempt to control cigarette marketing activities, including the advertising and promotion of cigarettes, through various laws and regulations and through self-regulatory mechanisms, such as voluntary codes of standards, that the cigarette companies institute. The Japan agreement contains no restrictions on cigarette advertising and promotional activities. Japan relies to a great extent on industry self-regulation to assure compliance with cigarette marketing guidelines, codes, and regulations. The cigarette trade agreement with Taiwan contains many provisions relating to advertising and promotional activities; the Taiwan authorities rely to a much lesser extent than Japan on self-regulation by the cigarette industry.

South Korea regulates the advertising and promotional practices of cigarette companies more heavily than either Japan or Taiwan. The cigarette trade agreement with Korea, the most recent section 301 based

cigarette trade agreement, contains the most specific and comprehensive provisions on cigarette advertising and promotional activities, including prohibitions against targeting women and children in cigarette advertisements and promotions.

USTR Official Maintains That U.S. Government Is Not Responsible for Assuring Compliance With Foreign Cigarette Marketing Restrictions

A USTR official maintains that section 301 based trade agreements are government-to-government agreements, whereby the foreign government agrees to remove certain unfair trade barriers and the U.S. government in return terminates the section 301 action. The official further states that the USTR does not consider the government to be responsible for monitoring or enforcing compliance by U.S. companies with terms of the agreements, which may restrict activities of the U.S. companies, or with any applicable foreign laws, rules, or regulations. According to the official, compliance, oversight, and enforcement are the responsibilities of the foreign government or its instrumentalities. The only monitoring responsibility that USTR has is to track foreign government compliance with its obligations under an agreement.

U.S. Government and Cigarette Exporting Companies Resist Further Restrictions on Cigarette Marketing

In response to growing antismoking movements, health ministry officials in Japan, Taiwan, and South Korea have proposed expanding their restrictions on cigarette advertising and promotional activities; strengthening requirements for health caution labels; and, where applicable, reflecting these new restrictions in amendments to the section 301 based cigarette trade agreements. In certain cases, U.S. cigarette companies, with the assistance of U.S. government officials, have opposed these efforts because they believe that the proposed changes would unfairly discriminate against U.S. cigarette manufacturers. Some of these efforts are discussed below.

Japan

In mid-1989, based on recommendations from an advisory committee, the Japanese Ministry of Finance was considering whether to further restrict cigarette TV advertising, require more stringent health caution labels on cigarette packs, and restrict the use of outdoor cigarette vending machines. A USTR official, acting at the request of U.S. cigarette companies, asked the Ministry of Finance to delay the implementation of the new regulations. The United States viewed the proposed regulations as discriminatory because they worked to the disadvantage of new entrants into the market. According to a U.S. embassy memorandum, a meeting between a USTR official and the Ministry of Finance probably resulted in the ministry's decision to phase in the television advertising

restrictions over 2 years, rather than implementing the regulation immediately as the advisory group had recommended.

Taiwan

During 1988 consultations with American Institute in Taiwan officials, the Taiwan authorities stated their intent to amend the section 301 agreement in order to ban cigarette promotional activities and magazine advertisements. According to records of the consultations, this ban was sought because the Taiwanese were concerned about the negative effect of cigarette advertising on young people and women. They cited the results of a study noting an increase in the number of young smokers and women smokers since implementation of the agreement in 1987.

Based on the belief that any changes to the agreement would limit the competitiveness of U.S. cigarettes, American Institute in Taiwan officials argued against such a ban and also against changes to the agreement's provisions on advertising and promotions. The officials believed that Taiwan authorities were using the cigarette advertising and promotion issue to avoid discussions of other market issues, such as excise taxes. To address the concerns of Taiwan officials, the U.S. cigarette industry proposed the establishment of a self-regulatory industry association and advertising code similar to those operating in Japan.

South Korea

Through a change in regulations, the Korean government strengthened health warning labels for domestic and imported cigarettes in late 1989. Both the U.S. government and U.S. cigarette companies have accepted this change without raising any market access issues.

Thailand

With certain minor exceptions, such as airport duty free shops, the sale of foreign cigarettes in Thailand is prohibited. In April 1988, the Thai government ordered the tobacco monopoly to discontinue cigarette advertising. The Thai government claims that foreign cigarette companies continued to advertise, and so, in February 1989, the government totally banned cigarette advertising. Despite the exclusion of foreign cigarettes from the market and the total ban on cigarette advertising, the Thai government alleges that foreign cigarette companies continue to advertise. Thai officials provided us with the following examples:

- A billboard that reads "WINSTON - American Country Life Style" was placed in a well-known night life section of Bangkok;

- A billboard that reads "WINSTON" was erected at a motor speedway in Pattaya;
- Tickets to attend "Winston Cup" racing are given to customers at gas stations;
- A "Salem" billboard was erected at the Pro-Am Golf Championship held on February 28, 1990; and
- A "Benson & Hedges" billboard was erected at a cricket game in Chieng Mai.

During our visit to Thailand, we observed some of these advertisements. A high level Public Health Ministry official told us that all of these infractions have been submitted to the Thai Consumer Protection Board for legal action.

Health Considerations of Cigarette Market Access

According to the Surgeon General's 1989 report, the prevalence of smoking among adults in the United States decreased from 40 percent in 1965 to 29 percent in 1987. It appears that to help offset this decrease in U.S. cigarette consumption, the major U.S. cigarette companies have sought market opportunities abroad. In recent years they have focused their attention on certain Asian countries, such as Japan, Taiwan, and South Korea.

At the same time, these countries are becoming increasingly aware of the health consequences of smoking. As cigarette consumption increases in these countries, there has been an increased prevalence of smoking-related illnesses such as lung cancer and heart disease. To the extent that the introduction of U.S. cigarettes to these markets and any associated increase in advertising have contributed to an increased incidence of smoking, U.S. trade actions contribute to these adverse health impacts.

Overall smoking rates for Japan, Taiwan, and South Korea are higher than those in the United States. While the smoking rates in Japan have gradually declined, the overall consumption rates in Taiwan and South Korea continue to rise. Smoking rates for women in these countries are substantially lower than for men.

The increased incidence of smoking in Taiwan and South Korea is generally attributed to a number of variables, including changes in social values, consumer tastes and preferences, rising incomes, and increased advertising since the introduction of U.S. cigarettes.

The role advertising plays in affecting demand for cigarettes in these three countries is controversial. On the one hand, cigarette industry representatives told us that advertising plays no role in attracting new smokers; it only affects switching between brands. On the other hand, health advocates argue that advertising plays a key role in attracting new smokers, especially those from young and female population groups.

Current Smoking Trends in the Targeted Asian Countries

The current smoking trends in Japan, Taiwan, and South Korea can be summarized as follows:

- The smoking population of Japan has declined significantly. In 1975, 76.2 percent of the adult male population were smokers. By 1988, the percentage had dropped to 61.2 percent, according to Japan Tobacco

Incorporated. During the period between 1982 and 1987, the total number of smokers in Japan fell 7.3 percent. While smoking rates have declined substantially for men, the overall rate for women has remained relatively constant at between 12 and 16 percent. Because smoking is illegal for minors, the government does not collect data on smoking rates for people under age 20.

- For Taiwan, good data are not available on the percentage of the population that smokes. Estimates of the prevalence of smoking for men range from 50 to 65 percent, and for women from 2 to 7 percent. Better statistics exist for actual consumption, which shows an increase of 20 percent from 1982 to 1988. Furthermore, consumption statistics are misleading because estimates of the large quantities of contraband cigarettes smuggled into Taiwan are not included.
- The South Korean cigarette market was characterized by growth between 1982 and 1986, although the rate of growth decreased. Industry experts had predicted that the market would plateau. However, after cigarette import restrictions were removed in 1988, South Korean consumption rose 6 percent over the 1987 level. According to a Gallup poll, 74 percent of Korean men smoked in 1987, up from 68 percent in 1982. Another private survey found that 71 percent of men and 19 percent of women smoked, and smoking rates for male teenagers rose from 18.4 percent in 1988 to 29.8 percent in 1989. For female teenagers, the rates rose from 1.6 percent to 8.7 percent during that same time period.

These changes in the incidence of smoking are attributed to a number of socioeconomic factors as well as to the altered marketing environment following the removal of import barriers.

Socioeconomic Factors

The sharp rise in disposable income associated with rapid economic growth in Japan, Taiwan, and South Korea has made an increase in smoking economically feasible.

In addition, as a result of industrialization, the traditional role of women is changing in those countries. Changes can be seen in relationships at home, in school, and in the workplace. More women are entering the work force, thereby providing them with the independence and disposable income with which to buy luxury items such as cigarettes. For example, according to a health advocacy group in South Korea, women who have moved to Seoul from rural areas have an increased incidence of smoking.

New Cigarette Marketing Strategies

Since the entry of U.S. cigarette companies into Asian markets, a number of sophisticated marketing techniques appear to have been adopted. Prior to the market openings, cigarette monopolies had control of the cigarette industry, including production and distribution. Most of these monopolies advertised little, if at all, because competition was minimal. Moreover, there is little evidence that cigarette advertising targeted at specific population groups, such as women, existed prior to the market openings.

Since the markets we studied have opened to foreign cigarettes, marketing has changed significantly. For example, in Japan, U.S. cigarette firms introduced sophisticated advertising. Japan Tobacco Incorporated responded by upgrading and increasing its own advertising. Japanese television advertising of cigarettes rose significantly in both frequency and length within 1 year after the trade agreement was signed. For example, sources we identified indicated that cigarette commercials, in a large Japanese district which includes Tokyo, went from 138th in total air time in 1983, to 15th in 1987, to 11th in 1989.

In Taiwan, as a result of the terms of the section 301 agreement, the Ministry of Economic Affairs has proposed a set of regulations to enact specific restrictions on cigarette advertising. These regulations, which have not yet been enacted, include a ban on special promotions and on television, radio, and newspaper advertising. According to the section 301 agreement, only magazine and point-of-sale advertisements can be used. Disputes have occurred between U.S. cigarette companies and the Taiwan tobacco monopoly concerning the interpretation of the new advertising restrictions. Taiwan tobacco monopoly officials claim that the U.S. cigarette companies target women in their advertising campaigns and use promotional activities such as sponsoring athletic and cultural activities to encourage smoking. One measure of the impact of imported cigarettes is that a 1987 survey of teenage smokers conducted by the John Tung Foundation, a local antismoking organization, found that 80 percent of those polled prefer imported cigarettes.

In 1987, according to the CEA section 301 petition to the USTR, South Korea banned all cigarette advertising and promotional activities, with the exception of certain point-of-sale advertisements. However, the 1988 section 301 cigarette market-opening agreement with South Korea allows restricted cigarette advertising and promotional activities. Since the market opening, the Korean tobacco monopoly has developed and marketed cigarette brands intended for women, such as "Lilac," "Jade," and "Rose." U.S. cigarette companies have also introduced brands into

the Korean market targeted to women, such as "Finesse" and "Virginia Slims."

A combination of factors—industrialization, more women entering the work force, new marketing techniques—are generally viewed as contributing to the changing cigarette consumption patterns in Japan, Taiwan, and South Korea. It will be some time before the full impact of the opening of these markets can be determined. However, increased smoking in segments of the population in which smoking incidence had historically been low has been identified by antismoking groups as an area of concern.

Antismoking Awareness Has Intensified in the Targeted Asian Countries

Concurrent with the success of U.S. market access efforts, there has been an increased awareness in Asia of the health consequences of smoking. The governments in the targeted Asian countries are aware that smoking has decreased in the United States over the past 25 years, that use of cigarettes in the United States is low compared to rates in their countries, but that U.S. cigarette exports have increased to their countries. More and more, cigarette smoking is being identified as a significant factor in the incidence of lung cancer and heart disease.

Grassroots health groups formed in the late 1970s-1980s in Japan, Taiwan, and South Korea and gained greater support after the markets opened to foreign cigarettes. However, U.S. cigarette exporters have alleged that the health issue has been used by the governments of these countries as a pretext for protecting their national cigarette monopolies. These monopolies have been an important source of government revenue and employment. USTR officials also believe that these governments are using the health issue as a pretext for protecting national monopolies.

The Japan Action on Smoking and Health (JASH) was formed in 1978 to increase the public awareness of nonsmokers' rights. JASH has had some limited success in getting smoking restricted in public places. It has developed antismoking educational programs and actively pursues the abolition of cigarette advertising on television and cigarette sales through vending machines.

The antismoking movement was strengthened in 1987 when Japan hosted the Sixth World Conference on Smoking and Health in Tokyo, a meeting of international antismoking groups, including WHO and various U.S. health organizations. The conference agreed to a public resolution

stating that tobacco should be treated differently from other products in international trade because of its adverse health effects.

In Taiwan, the John Tung Foundation was formed in 1984. Its primary objective is to teach young people about the dangers of smoking. For example, the Foundation hosts no-smoking clubs and parties for high school and university students. The Chairman of the John Tung Foundation established and provided initial funding in early 1989 for an Asian antismoking group called the Asian Pacific Association for the Control of Tobacco. This pan-Asian group is currently active in trying to prevent USTR from opening Thailand's cigarette market to U.S. exports.

In South Korea, the Korean Association on Smoking and Health (KASH) was formed in 1988, the same year the market opened to foreign cigarettes. KASH publishes articles, brochures, and newsletters and sponsors conferences concerning the dangers of smoking. This association submitted a proposal to the Ministry of Health that would require that all public places maintain separate smoking and nonsmoking areas. The Ministry of Health announced the proposal to Parliament in 1989.

The Seventh World Conference on Tobacco and Health was held in Perth, Australia, in April 1990. Participants from 70 countries attended. According to some of the participants, it is apparent that the international antismoking movement is growing and uniting in its efforts to decrease worldwide cigarette consumption. The conference participants agreed to two resolutions dealing with tobacco product trade. The first resolution urges nations "not to use trade leverage to compel other nations to repeal ... restrictions on the ... manufacture, import, distribution, sale or advertisement of tobacco products, and specifically the U.S. government is called upon to cease pro-tobacco trade actions against Thailand and other countries." The second resolution "urges GATT to acknowledge that tobacco products are uniquely hazardous and that nations have the right to tax, prohibit or restrict the manufacture, import, distribution, sale or advertisement of tobacco products."

According to a presentation at the Perth Conference by a U.S. government official, premature deaths from smoking are currently 2.5 million per year. A WHO epidemiologist projected an increase in mortality due to increases in smoking. He predicted that during the 1990s there would be about 3 million deaths a year from smoking. But, by the time the young people of today reach middle age, increased smoking would lead to about 10 million deaths per year.

The American Cancer Society presented GLOBALINK at the conference. GLOBALINK is a plan for a computer-based system tracking worldwide smoking, mortality and morbidity rates, smoking control activities, and tobacco industry activities. The Cancer Society will be providing technical assistance to developing countries on how to participate in the GLOBALINK plan.

Because of the growth of antismoking sentiment in Asia, the ongoing section 301 cigarette case directed at Thailand is receiving a lot of media attention in both the American and Thai press. Much of the activity at the conference in Perth included reference to the ongoing Thai section 301 case.

U.S. Antismoking Efforts

Responding to growing health concerns over smoking, Congress has passed a number of laws that have restricted the marketing and use of tobacco products. In addition, the U.S. government has supported increased education, both domestically and internationally, about the health implications of tobacco use.

In 1965, Congress enacted the Cigarette Act requiring all cigarette packages (not including cigarette advertisements) to include the statement: "Caution: Cigarette Smoking May Be Hazardous To Your Health." This caution was strengthened in the 1970 Cigarette Labeling Act to read: "Warning: The Surgeon General Has Determined That Cigarette Smoking Is Dangerous To Your Health." Congress also enacted a ban on all cigarette advertising on television and radio, effective January 1971.

In 1982, Congress increased the excise tax on cigarette products for the first time since 1951, raising the per-pack tax charged from 8 cents to 16 cents. Two years later, Congress enacted the Comprehensive Smoking Education Act, which required (1) replacing the existing health caution warning with four stronger, more specific health warnings on cigarette packages, cigarette advertisements, and cigarette billboards; (2) creating a statutory mandate for a federal office on smoking and health; and (3) disclosing to the Department of Health and Human Services all chemicals and other ingredients added to cigarettes during the manufacturing process. In 1987, Congress banned all smoking aboard commercial aircraft on all flights of 2 hours or less. And, in 1989, Congress extended the ban on smoking aboard commercial aircraft to include all domestic flights, except those to Alaska and Hawaii, regardless of the length of the flight.

HHS has the lead role in the U.S. government's efforts in the area of smoking and health. It chairs the statutorily established Interagency Committee on Smoking and Health, which advises the Secretary of HHS on a wide range of these issues, including the international health implications of tobacco use. The 1989 Surgeon General's Report reported that HHS expenditures on smoking and health prevention activities amounted to $39.5 million for fiscal year 1986.

The Office of Smoking and Health, under the Assistant Secretary for Health, is the focal point for all HHS activities related to smoking and health. That office, with a 1990 budget of $3.4 million, coordinates HHS smoking prevention education and research efforts both nationally and internationally.

At a recent World Conference on Tobacco and Health, the Assistant Secretary for Health made the keynote address, which strongly criticized the marketing activities of transnational cigarette companies in developing countries. Also, the Secretary of HHS has recently publicly addressed the health consequences of smoking and criticized the marketing techniques and strategies of cigarette companies.

The United States also supports the efforts of international organizations to curb tobacco use through its membership in and financial support of WHO. As a member of WHO, the United States contributes 25 percent of the total WHO budget. WHO has established a global program to discourage tobacco use and bring greater awareness of the health consequences of smoking. WHO's budget for 1990-91 for antismoking programs is about $1.2 million.

Furthermore, a U.S. government agency with international programs, the Overseas Private Investment Corporation (OPIC), has established a policy that recognizes the dangers of smoking. OPIC encourages and facilitates private U.S. investment in developing countries by providing loans and political risk loan guaranty insurance. In 1984, OPIC established a policy that requires consideration of the health consequences of smoking cigarettes in evaluating requests for OPIC support. As a result, OPIC has denied assistance to U.S. cigarette companies wishing to promote their enterprises overseas. This policy decision was made because of the Surgeon General's concerns about the health and economic consequences of smoking.

Concerns have been expressed that U.S. policy and programs for assisting the export of tobacco and tobacco products work at cross purposes

to U.S. health policy, both domestically and internationally. In September 1989, the former Surgeon General, C. Everett Koop, testified at a USTR hearing on the Thailand cigarette case, and was critical of U.S. tobacco trade policy because it does not include consideration of the health impact of that policy. He stated that he believes the inconsistency between U.S. tobacco trade policy and U.S. health policy is obvious and works against U.S. interests in the international health community. He added that the United States is in the process of reversing its positive influence in the cause of public health through its aggressive tobacco trade policy, and that this trade policy is "all the more questionable" because the United States is taking a firm public health stand domestically against tobacco use.

Matters for Congressional Consideration

The U.S. government's role in helping the export of cigarettes and other tobacco products raises important policy issues. On the one hand, the government is committed to help U.S. exporters overcome foreign market barriers to the export of legal products. On the other hand, the U.S. government has determined that smoking is hazardous to health and is actively working to reduce smoking and the use of other tobacco products.

If Congress believes that trade concerns should predominate, then it may choose to do nothing to alter the current trade policy process. The U.S. government can simultaneously continue to actively help U.S. cigarette exporters overcome foreign trade barriers while promoting awareness of the dangers of smoking and further restricting the circumstances in which smoking may take place.

If Congress believes that health considerations should have primacy, Congress may choose to grant HHS the responsibility to decide whether to pursue trade initiatives involving products with substantial adverse health consequences.

Alternatively, rather than having one policy dominate, Congress may specifically require that health matters be included in the interagency trade policy process so that health issues receive some consideration on a case-by-case basis. Such a change would necessitate that HHS participate in the interagency trade policy decision-making process.

Impact of Increased U.S. Cigarette Exports on U.S. Tobacco Farmers

Global Tobacco Situation

Tobacco and tobacco products are produced and traded throughout the world. About 30 percent of the world's tobacco production is traded internationally. World production of tobacco was about 6.3 million metric tons in 1989. While China was the largest producer of tobacco in 1989, with about a 40 percent share, the United States was the world's leading exporter of tobacco, accounting for about 15 percent of world tobacco exports. Other major producers of tobacco and their shares in 1989 were the United States (9 percent), India (7 percent), Brazil (6 percent) and the Soviet Union and Turkey (3 percent each). Other major exporters of tobacco and their shares in 1989 were Brazil (14 percent), Greece (9 percent), and Zimbabwe, Italy, and Turkey (8 percent each).

Cigarette production accounts for about 85 percent of the products manufactured from tobacco. World cigarette production was about 5.3 trillion in 1988. About 8 percent of world cigarette production is exported. China was the largest producer of cigarettes in 1988, with about a 29 percent share, but the United States was the largest exporter of cigarettes, accounting for about 26 percent of world cigarette exports. Other major producers of cigarettes and their shares in 1988 were the United States (13 percent), the Soviet Union (7 percent), and Japan (5 percent). Other major exporters of cigarettes and their shares in 1988 were Bulgaria (16 percent), the Netherlands (13 percent), West Germany (10 percent), Hong Kong (9 percent), and the United Kingdom (8 percent).

U.S. Domestic Tobacco Situation

In 1987, tobacco was grown on about 137,000 farms in the United States, with an average of about 5 acres per farm. This was a decrease in the number of farms from about 179,000 in 1982 and about 500,000 in the 1950s. There are several kinds of tobacco grown on U.S. farms, with flue-cured and burley—both cigarette tobaccos—accounting for over 90 percent of total production.

Tobacco is the sixth largest U.S. cash crop, after corn, soybeans, wheat, hay, and cotton. In 1988, farmers received about $2.25 billion at auctions for their tobacco. However, consumer spending for tobacco products was about $38 billion in 1988. (Only about 6 percent of the price of a pack of cigarettes reflects the price of the tobacco leaf in the cigarettes.) From these sales, an estimated $9.3 billion in taxes was collected in 1988—$4.4 billion by the federal government and $4.9 billion by state and local governments.

The Agricultural Adjustment Act of 1933 established price supports that guarantee established prices to the growers if they adhere to strict marketing quotas or acreage allotments that restrict production. The

price support activities are administered by producer-owned cooperative associations through loan agreements with the Commodity Credit Corporation (CCC). Under these agreements, the association uses the CCC loans to pay the growers the support price and the costs to process and store the tobacco until it is sold. According to the U.S. Department of Agriculture (USDA), the growers have benefited from the higher prices they receive because of the marketing quotas and price supports, and the cigarette manufacturers have been assured adequate supplies of the types and qualities of leaf needed for their product. Since 1982, the program has been operated on a "no net cost" to the government basis. Farmers and cigarette manufacturers now pay a special assessment into a CCC account to cover the cost of the price support program. USDA estimates that the federal government spent $56 million in fiscal year 1988 for administering the price support program and providing a variety of research, marketing, and information services to tobacco growers.

U.S. Tobacco Farmers Benefiting From Increased Cigarette Exports

Despite reduced domestic cigarette consumption, U.S. production of tobacco has risen in the last 4 years: 29 percent for flue-cured tobacco and 38 percent for burley tobacco, the primary tobaccos used in U.S. cigarettes. These tobacco production increases were partly caused by the large rise in U.S. cigarette exports, which grew from about 64 billion cigarettes in 1986 to about 142 billion cigarettes in 1989. About 55 percent of this increase is attributable to imports of U.S. cigarettes by Japan, Taiwan, and South Korea. Therefore, it would appear that not only have the cigarette manufacturers benefited from the increased U.S. exports, but also the U.S. tobacco growers have gained from the greater U.S. cigarette exports. In addition, since U.S. tobacco is considered to be the finest quality in the world, exports of U.S. tobacco leaf to these countries have also increased since 1986; Japan, Taiwan, and South Korea are now using more U.S. tobacco to improve the quality of their domestically produced cigarettes to compete with foreign imports.

We have reviewed a number of studies performed by the USDA's Economic Research Service and Foreign Agricultural Service, the cigarette industry, and academia, and have interviewed a number of tobacco industry officials to determine whether the U.S. tobacco grower has benefited from the increased cigarette exports. Some tobacco industry officials had expressed concern that these increased cigarette exports could have an adverse impact on U.S. shipments of tobacco leaf. However, these studies conclude that, thus far, the U.S. growers have benefited.

For example, a Foreign Agricultural Service study of the tobacco trade with Japan, South Korea, and Taiwan following trade liberalization concluded that

"...tobacco exports in the form of cigarettes do have a positive impact on the net tobacco trade balance. However, it cannot be concluded that exports of tobacco in cigarettes are displacing or substituting for leaf shipments."

[Text omitted.]

"Still it appears that U.S. leaf tobacco exports have benefited incidentally from expanded cigarette exports to these markets. Cigarette manufacturers in these countries have shown greater interest in U.S. leaf tobacco as new cigarette brands using more U.S. leaf are being developed to compete with the U.S. cigarette brands. Indeed, this has led to increased purchases of U.S. tobacco in Taiwan and South Korea."

A September 1989 study by the Tobacco Merchants Association concluded that the liberalization of the Japanese, Taiwan, and South Korean markets has resulted in multimillion dollar and multimillion pound net gains in leaf sales to the U.S. producers. The study stated that

"Specifically, over the period 1986-88 the study shows that U.S. leaf producers sold over 108 million pounds more tobacco leaf than would have been sold had there been no U.S. cigarette market entry in Japan, Taiwan, and Korea. Valued at more than $175 million on the auction floor, such net additional U.S. tobacco leaf exports include both a negative total leaf impact in Taiwan for flue-cured as well as a negative direct leaf impact for Japan...."

"As U.S. cigarette exports gain an even greater foothold in Asia, one would expect that the foreign monopoly demand for direct burley shipments, along with high quality U.S. flue-cured, will grow as the monopolies compete head-to-head against U.S. cigarette blends."

Also, in an August 1989 study of the effects of the U.S. cigarette export market on U.S. burley tobacco demand, the University of Kentucky, College of Agriculture, Cooperative Extension Service, concluded that

"With U.S. cigarette consumption projected to decline another 20-25% by the year 2000, the importance of the international market for the U.S. burley tobacco industry is obvious. Unmanufactured U.S. burley leaf exports have exhibited some growth during the 1980s, but the major area of growth has been in manufactured form through the U.S. cigarette export market. U.S. cigarette exports increased 56% in 1987, 18% in 1988, and 23% during the first quarter of 1989 as U.S. cigarette manufacturers benefited from the removal of various trade restricting barriers in several Asian markets. As a result, U.S. burley quotas increased 2% in 1988, 24% in 1989, and are projected to increase again in 1990."

[Text omitted.]

"Therefore, it appears that the international consumption of U.S. burley will continue its increasing trend leading into the 21st century, combating the expected decline in domestic U.S. burley consumption and putting upward pressure on the U.S. burley quota."

An executive of the Tobacco Growers Association of North Carolina told us in December 1989 that the flue-cured tobacco growers are currently in the most stable situation they have been in over the past 20 years and that increased cigarette exports have a lot to do with it. He stated that the flue-cured tobacco quotas have risen over the past 3 years, and the projected 1990 effective quota is also higher. Total tobacco sales for 1989 rose 3 percent over 1988 sales, and the "average over support price" rose from $17.17 to $20.72 per 100 pounds, and only 3 percent of total tobacco available for sale went into stabilization stocks.

He believes there will be fewer fluctuations for the tobacco growers than in the past during the next 10 years because (1) there is a commitment from cigarette manufacturers to buy more U.S. tobacco, (2) there are new markets for U.S. tobacco and cigarettes, for example, in the Pacific Rim, where there is a potential for growth, and (3) tobacco growers have committed themselves to making heavy investments in equipment, fertilizers, and pesticides.

On this same subject, a tobacco specialist from Agriculture's Economic Research Service told us in April 1990 that between 1986 and 1990, tobacco production will likely have increased about 350 million pounds. Grower incomes rose, and the grower's expense of no-net-cost assessments were smaller. According to the tobacco specialist, more tobacco is being used largely because of higher U.S. cigarette production resulting from growth in U.S. cigarette exports. A rough estimate is that about one-quarter of the increase, or about 85 million pounds of tobacco, may be attributed to rising cigarette exports. The specialist also stated that because U.S. consumption is declining, any future production increase beyond 1990 will likely result from increased exports of cigarettes and leaf.

Tobacco and Tobacco Product Balance of Trade

As set forth in Table II.1, the United States has exported more tobacco and tobacco products than it has imported. During the period 1986-89, the net trade surplus of the U.S. tobacco industry grew over 100 percent, from $2 billion to $4.3 billion. This growth was due to several factors, such as the gains in disposable income in importing countries, the weakening of the U.S. dollar, the growing popularity of U.S.-blended cigarettes, and the removal of trade barriers, especially in certain Asian countries.

Specifics on the trade surplus of U.S. tobacco and tobacco products during the period follow.

Table II.1: U.S. Tobacco and Tobacco Product Trade Balance

Dollars in Thousands

All Countries	1986	1987	1988	1989
Exports				
Unmanufactured tobacco	$1,209,600	$1,089,900	$1,252,800	$1,340,600
Manufactured	1,522,200	2,309,600	2,900,900	3,632,000
Total	**$2,731,800**	**$3,399,500**	**$4,153,700**	**$4,972,600**
Imports				
Unmanufactured tobacco	$609,300	$620,000	$557,200	550,400
Manufactured	79,500	90,500	86,100	87,700
Total	**$688,800**	**$710,500**	**$643,300**	**$638,100**
Net Trade Balance	**$2,043,000**	**$2,689,000**	**$3,510,400**	**$4,334,500**

Source: United States Department of Agriculture

Table II.2: U.S. Tobacco and Tobacco Product Trade Balance With Japan

Dollars in Thousands

	1986	1987	1988	1989
Exports				
Unmanufactured tobacco	$232,000	$300,800	$212,000	$299,100
Manufactured	130,700	491,900	606,300	871,200
Total	**$362,700**	**$792,700**	**$818,300**	**$1,170,300**
Imports				
Unmanufactured tobacco	$600	$3,100	$6,900	$500
Manufactured	600	600	1,100	600
Total	**$1,200**	**$3,700**	**$8,000**	**$1,100**
Net Trade Balance	**$361,500**	**$789,000**	**$810,300**	**$1,169,200**

Source: United States Department of Agriculture

Table II.3: U.S. Tobacco and Tobacco Product Trade Balance With South Korea

Dollars in Thousands

	1986	1987	1988	1989
Exports				
Unmanufactured tobacco	$5,600	$800	$10,000	$10,900
Manufactured	5,700	6,100	56,400	106,400
Total	**$11,300**	**$6,900**	**$66,400**	**$117,300**
Imports				
Unmanufactured tobacco	$25,000	$16,700	$18,900	$5,400
Manufactured	000	100	000	000
Total	**$25,000**	**$16,800**	**$18,900**	**$5,400**
Net Trade Balance	**$(13,700)**	**$(9,900)**	**$47,500**	**$111,900**

Source: United States Department of Agriculture.

Table II.4: U.S. Tobacco and Tobacco Product Trade Balance With Taiwan

Dollars in Thousands

	1986	1987	1988	1989
Exports				
Unmanufactured tobacco	$41,400	$18,000	$55,400	$110,000
Manufactured	4,400	118,800	119,200	98,000
Total	**$45,800**	**$136,800**	**$174,600**	**$208,000**
Imports				
Unmanufactured tobacco	$000	$000	$100	$700
Manufactured	000	000	000	000
Total	**$000**	**$000**	**$100**	**$700**
Net Trade Balance	**$45,800**	**$136,800**	**$174,500**	**$207,300**

Source: United States Department of Agriculture

U.S. Foreign Market Development Programs for Tobacco

The export of U.S. tobacco is assisted by three federally funded market development programs. They are the Department of Agriculture's Cooperator Market Development Program, the Targeted Export Assistance Program, and the Export Credit Guarantee—GSM 102-103—programs.

In the Cooperator Market Development Program, which was initially authorized by the Agriculture Trade Development and Assistance Act of 1954, Agriculture's Foreign Agricultural Service authorizes about 50 private, nonprofit agricultural organizations to conduct market development activities overseas to increase both consumer and commercial uses of U.S. agricultural commodities and their derivatives by overcoming constraints to exports. These market development activities involve technical assistance, trade servicing, and consumer protection. In fiscal year 1990, total funding for the Cooperator Program is about $35 million, of which about $150,000 is allocated to Tobacco Associates, the tobacco cooperator.

The Targeted Export Assistance Program, which was authorized by the Food Security Act of 1985, is modeled after the Cooperator Program and was established to counter or offset the adverse effects of subsidies, import quotas, or other unfair trade practices of foreign competitors on U.S. agricultural exports. In fiscal year 1990, the program has an appropriated funding level of $200 million, of which $5 million is allocated to Tobacco Associates.

Through the program, Tobacco Associates provides certain countries with the technology, equipment, and training necessary to manufacture a U.S.-blended cigarette that uses significant amounts of U.S. flue-cured and burley tobaccos. The specific objective of these activities is to benefit the U.S. tobacco growers through (1) regular sales of U.S. tobacco to these countries, (2) favorable economic activity from increased exports of U.S. tobaccos, and (3) the establishment of new foreign markets. Countries where these activities are underway or planned are Turkey, South Korea, Taiwan, and Thailand. Agreements were entered into with Turkey and South Korea to develop U.S. blended cigarettes that would include significant amounts of U.S. tobacco.

Agriculture's Export Credit Guarantee Programs-GSM 102 and 103—were established to expand the export sale of U.S. agricultural commodities by stimulating U.S. bank financing of foreign purchases on credit terms. The GSM-102 Program guarantees the repayment of credit extended on credit terms of up to 3 years; GSM-103 guarantees up to 10 years. A total of 66 companies received GSM guarantee credits on 127 million pounds of tobacco valued at $214 million and loan guarantees of

about $210 million, shipped during the period October 1985 through September 1988. Shipments of tobacco under these programs were stopped in 1989 after $27.2 million of tobacco was shipped to Iraq following allegations against some tobacco exporters of mixing foreign tobacco with U.S. tobacco and exporting it as completely U.S. tobacco. Such activity is not authorized under the program and is the subject of a current U.S. attorney's investigation.

Cigarette Marketing Restrictions in Targeted Asian Nations

Japan

The first cigarette section 301 agreement was concluded in October 1986 with Japan. The terms of the agreement only relate to marketing issues such as tariff rates, cigarette pricing, and distribution. The agreement does not refer to cigarette promotional activities or to any health warning label requirements. In fact, the section 301 agreement does not even contain provisions requiring the U.S. cigarette companies to comply with its terms.

Shortly after the section 301 agreement was signed, the Japan tobacco monopoly and the foreign cigarette companies doing business in Japan established the Tobacco Institute of Japan. This voluntary self-regulatory association attempts to oversee cigarette marketing activities by promoting compliance by members with established cigarette marketing guidelines, codes, and regulations. According to Japanese government officials, Japanese law requires health warning labels on cigarette packs and prohibits smoking by minors. These officials add, however, that the Japanese government has no law or regulation that governs cigarette advertisements or promotions. Instead, the government issues informal guidelines to the Tobacco Institute and relies on it to self-regulate cigarette advertisements and promotional activities.

According to a Tobacco Institute official, the institute operates as "a social club" because it has no legal authority to enforce the advertising code. It relies on the Japanese government to enforce legal requirements and on its members' own sense of professionalism to assure compliance with those provisions that go beyond existing laws and regulations.

Taiwan

The section 301 agreement with Taiwan contains many provisions relating to advertising and promotional activities. Moreover, the Taiwan authorities rely to a much lesser extent than Japan on self-regulation by the cigarette industry. The section 301 agreement places restrictions on cigarette advertising and requires health warning labels on cigarette packs, but allows for special cigarette promotions and certain promotional displays.

Soon after the agreement, the Taiwan monopoly issued regulations to implement the terms of the agreement. According to American Institute in Taiwan officials, a recent law prohibits the sale of cigarettes to minors and proposed legislation would prohibit cigarette companies from targeting minors in cigarette advertisements. U.S. cigarette companies are currently working with USTR to establish an industry association and a self-regulatory advertising code for Taiwan. The Taiwan monopoly officials claim that the monopoly supports the U.S.' efforts, but it

has not participated in developing the code nor agreed to join an industry self-regulatory association.

South Korea

South Korea regulates the advertising and promotional practices of cigarette companies more heavily than either Japan or Taiwan and, thus, relies less on self-regulation or voluntary compliance. The section 301 agreement with South Korea contains the most specific and comprehensive provisions on cigarette advertising and promotional activities, including prohibitions against targeting women and children in cigarette advertisements and promotions. The agreement also requires health warnings on cigarette packs and in magazine advertisements. Cigarette advertising, with the exception of minor point-of-sale activity, had been prohibited through a March 1987 law.

According to industry documents, the South Korean law that implements the section 301 agreement places a few restrictions on advertising that go somewhat beyond the terms of the agreement. For example, cigarette advertising can only inform smokers of the brand names, kinds, and characteristics of cigarettes. It cannot attempt to attract new smokers or violate the intentions of the health warning labels.

A cigarette industry group consisting of the three major U.S. cigarette exporting companies and the South Korean tobacco monopoly has not developed an industry code of conduct nor become a self-regulatory body.

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